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DRAFTING OF A DECLARATION ON THE RIGHT AND RESPONSIBILITY OF INDIVIDUALS, GROUPS AND ORGANS OF SOCIETY TO PROMOTE AND PROTECT UNIVERSALLY RECOGNIZED HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Report of the Working Group on its thirteenth session

Chairman-Rapporteur: Mr. Jan Helgesen (Norway)

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Introduction

1. The Commission on Human Rights, by decision 1985/112 of 14 March 1985, established an open-ended working group to draft a declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms. This decision was approved by the Economic and Social Council in its decision 1985/152 of 30 May 1985. The Working Group held its first to twelfth sessions prior to the forty-second to fifty-third sessions, respectively, of the Commission on Human Rights, its reports to the Commission being contained in documents E/CN.4/1986/40, E/CN.4/1987/38, E/CN.4/1988/26, E/CN.4/1989/45, E/CN.4/1990/47, E/CN.4/1991/57, E/CN.4/1992/53 and Corr.1, E/CN.4/1993/64, E/CN.4/1994/81 and Corr.1, E/CN.4/1995/93, E/CN.4/1996/97 and E/CN.4/1997/92.

2. The Commission, in its resolution 1997/70 of 16 April 1997, decided to continue its work with a view to adopting the draft declaration at its fifty-fourth session. The Economic and Social Council, in its resolution 1997/51, authorized the open-ended working group to meet for a period of eight working days prior to the fifty-fourth session of the Commission on Human Rights in order to finalize its elaboration of the draft declaration.

I. ORGANIZATION OF THE SESSION

A. Opening and duration of the session

3. The thirteenth session of the Working Group was opened by the High Commissioner for Human Rights, who made a statement. During the session the Working Group held seven plenary meetings, from 23 February to 4 March, and adopted its report on 19 March 1998.

B. Election of the Chairman-Rapporteur

4. At its 1st meeting, on 23 February 1998, the Working Group elected Mr. Jan Helgesen (Norway) Chairman-Rapporteur.

C. Participation

5. The representatives of the following States members of the Commission attended the meetings of the Working Group: Argentina, Austria, Bangladesh, Belarus, Brazil, Canada, Chile, China, Cuba, Czech Republic, Denmark, El Salvador, France, Germany, Guatemala, India, Indonesia, Ireland, Italy, Japan, Malaysia, Mexico, Morocco, Pakistan, Peru, Philippines, Poland, Russian Federation, Senegal, South Africa, Sri Lanka, Sudan, Tunisia, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela.

6. The following States non-members of the Commission were represented by observers: Australia, Bolivia, Costa Rica, Croatia, Dominican Republic, Egypt, Estonia, Ethiopia, Finland, Hungary, Iran (Islamic Republic of), Netherlands, New Zealand, Norway, Portugal, Romania, Slovakia, Spain, Sweden, Syrian Arab Republic, the former Yugoslav Republic of Macedonia, Turkey.

7. The following non-member States of the United Nations were also represented by observers: Holy See, Switzerland.

8. The following United Nations body was represented by observers: Office of the United Nations High Commissioner for Refugees.

9. The International Committee of the Red Cross was also represented by an observer.

10. The following non-governmental organizations in consultative status with the Economic and Social Council were represented by observers at the meetings: Amnesty International, Association for the Prevention of Torture, Baha'i International Community, Center for Justice and International Law, International Commission of Jurists, International Federation of Human Rights Leagues, International Service for Human Rights, Lawyers Committee for Human Rights, North South XXI, Women's International League for Peace and Freedom, World Conference on Religion and Peace.

11. Afronet, the Carter Center and the Colombian Commission of Jurists, also non-governmental organizations, were represented by observers.

D. Documentation

12. The Working Group had before it the following documents:

E/CN.4/1998/WG.6/1	Provisional agenda
E/CN.4/1998/WG.6/CRP.1	Consolidated text of the draft declaration submitted by the Chairman-Rapporteur
E/CN.4/1998/WG.6/CRP.2	Proposed draft article on funding submitted by the delegation of South Africa
E/CN.4/1998/WG.6/CRP.3	Text of future article on funding provisionally accepted ad referendum by the Working Group as a basis for a compromise
E/CN.4/1998/WG.6/CRP.4	Amendments to document E/CN.4/1998/WG.6/CRP.1 submitted by the delegations of Cuba, China, Egypt, Iran (Islamic Republic of), Sudan, the Syrian Arab Republic and Yemen
E/CN.4/1998/WG.6/CRP.5	Text emanating from informal consultations coordinated by the delegates of Egypt and the Netherlands
E/CN.4/1998/WG.6/CRP.1/Rev.1	Revised text of the draft declaration submitted by the Chairman-Rapporteur
E/CN.4/1997/92	Report of the Working Group on its twelfth session

E. Organization of work

13. The Working Group adopted its agenda, as contained in document E/CN.4/1998/WG.6/1, at its 1st meeting, on 23 February 1998.

14. The Working Group organized its work in a combination of plenary formal and informal meetings and meetings of the informal drafting group headed by the delegates of Egypt and the Netherlands.

II. CONSIDERATION AND ADOPTION OF THE DRAFT DECLARATION

15. In the course of its thirteenth session, the Working Group considered and adopted the draft declaration as contained in the consolidated text submitted by the Chairman-Rapporteur and subsequently revised by him on the basis of the proposals and amendments submitted by delegations and by the informal drafting group, as described in the paragraphs that follow.

A. General debate

16. At the 1st meeting of the Working Group, on 23 February 1998, the Chairman-Rapporteur recalled that at last year's session he had been entrusted by the Group with the task of holding informal consultations in the inter-sessional period in order to produce a revised consolidated text of the draft declaration. He drew the attention of the Working Group to the consolidated text he had drafted in accordance with this mandate (E/CN.4/1998/WG.6/CRP.1), and indicated that this text was identical to the consolidated text submitted by him in 1997, as contained in annex I to the report of the Working Group on its twelfth session (E/CN.4/1997/92), with the following changes:

Article 14 became article 18;

Article 16 became article 17;

Former article 2 in chapter V of the first reading text became article 14;

Former article 5 in chapter V of the first reading text (as modified) became article 16;

A text on observance of trials is included in article 7, paragraph 3 (see E/CN.4/1997/92, para. 41).

17. The Chairman-Rapporteur also pointed out that he had not included in the document an article on the issue of financing since he did not find himself in a position to present a text on this question which could serve as a basis for consensus. He would, however, be most willing to include such an article if it appeared to be acceptable to the Working Group.

18. In the general debate that followed, most participants agreed on the need to conclude the work on the draft declaration without further delay and felt that it would be especially fitting to do so now, during the fiftieth anniversary year of the Universal Declaration of Human Rights.

19. Other participants considered that to strive for a text that was suitable for bringing about a consensus within the Working Group and its parent bodies was more important than any self-imposed time limit.

20. The Chairman's consolidated text was found by most speakers to be a balanced proposal which constituted an acceptable basis for a possible compromise, even though it was not ideal.

21. According to another view, the consolidated text appeared to be below the threshold of existing standards and was therefore unacceptable in its present form. It was also stated in this connection that much of the substance of the original text had been watered down to accommodate the positions of a minority of States. Thus, it was argued that the current text unnecessarily incorporated references to duties of human rights defenders and gave national law too prominent a role in the draft declaration. Individuals and groups had moral responsibilities in promoting human rights, but these were already covered in international human rights instruments; it was States that had obligations to promote human rights. It was strongly stated that the Working Group's efforts must advance and reinforce human rights, not build new barriers.

22. It was suggested by some participants that the consolidated text, which was seen by them as a common denominator, should be adopted by the Working Group without making any substantive changes in order to preserve it as a compromise package and to ensure that the text did not weaken the existing international provisions, and without reopening the discussion on the issues already discussed by the Group at its previous sessions.

23. It was, however, pointed out by other speakers that the consolidated text had not been discussed in detail by the Working Group at its last session because of lack of time, and therefore it should be examined by the Group. They also felt that the question of financing was not the only outstanding issue, and referred in that connection to the question of domestic legislation.

24. Several speakers indicated that the Chairman's consolidated text could only serve as a basis for consensus subject to reaching a satisfactory solution on the outstanding issue of financing. They expressed the wish to see strong, positive language on financing, recognizing that access to funding was a major factor in enabling human rights defenders to work effectively on the ground. It was stated in this connection that there should be no arbitrary or discriminatory restrictions on the fund-raising rights of human rights defenders and that they should have unhampered access to financial contributions without distinction between internal and external sources of funding.

25. All speakers commended the Chairman-Rapporteur on his energy and dedication in his attempts to attain an acceptable draft declaration.

B. The issue of financing

26. At the 3rd meeting, on 25 February 1998, the representative of South Africa reintroduced her delegation's proposal submitted at the twelfth session of the Working Group (E/CN.4/1997/92, para. 66) and revised it to read as follows:

> "Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the purpose of promoting and protecting, through peaceful means, human rights and fundamental freedoms (subject to the provisions/in accordance with the provisions of article 14 in CRP.1)."

This proposal was subsequently circulated as CRP.2.*

27. Following the consideration of this proposal in the informal drafting group coordinated by the representative of Egypt, the Working Group agreed to provisionally accept ad referendum, as a basis for a compromise, the text of a future article on funding (CRP.3) reading as follows:

> "Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms, through peaceful means, in accordance with article 14 of this Declaration."

C. Action leading to the adoption of the draft declaration by the Working Group

28. At the 4th meeting, on 26 February 1998, following the discussion of the question of modalities of work of the Working Group in informal meetings, the Chairman-Rapporteur proposed to proceed on the basis of multifaceted consultations. This proposal was accepted by the Working Group.

29. At the 5th meeting, on 2 March 1998, the Working Group had before it amendments to the consolidated text of the Chairman-Rapporteur submitted by the delegations of Cuba, China, Egypt, Iran (Islamic Republic of), the Sudan, the Syrian Arab Republic and Yemen (CRP.4) reading as follows:

(a) Preamble:

(i) First paragraph, second line: replace "all" by "universally recognized";

(ii) Third paragraph: add, at the end of the paragraph, the following words: "and stressing the paramount importance of achieving international cooperation to fulfil this obligation, according to the United Nations Charter," (wording after the second reading of the original draft);

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* Article 14, as referred to in CRP.2, later became article 3.

(iii) Fourth paragraph: replace the wording adopted in first reading with the present text in CRP.1;

(iv) Seventh paragraph: replace the text with the following: "Stressing that each State has the prime responsibility and duty to promote and protect human rights and fundamental freedoms," (as included in the former eighth preambular paragraph of the original draft after the second reading);

(b) Articles:

(i) Article 3: add the following words at the beginning of the text: "Subject to the provisions of article 14 and";

(ii) Article 4 (a), first line: insert the words "through legal means," after the word "information";

(iii) Article 4 (b), first line: delete the words "human rights";

(iv) Article 5, second line: insert the word "ideas" after the words "human rights" (as originally included after the second reading);

(v) Article 7, paragraph 3 chapeau: insert the words "and in accordance with national regulations," after the words "To the same end,";

(vi) Article 7, paragraph 3 (a), third line: replace "appropriate" with "lawful";

(vii) Article 7, paragraph 4: replace the text with the following: "To the same end, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights, in accordance with applicable international instruments and procedures" (as the text stood after the second reading);

(viii) Article 10: add the words "Subject to the provisions of article 14," at the beginning of the paragraph;

(ix) Article 10, paragraph 2, first line: add the words "take all necessary steps" after the words "The State shall" (as in the text resulting after the second reading);

(x) Article 10, paragraph 2, seventh line: replace "attributable" with "carried out by" (as in the text resulting after the second reading);

(xi) Article 11: add a new paragraph 4, reading as follows:

"4. Nothing in the present Declaration shall be interpreted as permitting any State, through direct or indirect financing of individuals, groups, institutions or non-governmental organizations, or otherwise, to intervene in matters which are essentially within the domestic jurisdiction of other States.";

(xii) Article 14, first line: add a comma after the words "United Nations Charter";

(xiii) Article 15, third line: delete the words "and are";

(xiv) Article 16, paragraph 2, third line: insert the words "promotion and" after the words "to the";

(xv) Article 16: add a new paragraph 4, reading as follows:

"4. Everyone, individually and in association with others, has the responsibility to carry out their activities for the promotion, protection and realization of human rights and freedoms taking fully into account the principles of universality, objectivity, impartiality and non-selectivity as well as the need to avoid the introduction of political considerations in those activities.";

(xvi) Article 16: add a new paragraph 5, reading as follows:

"5. Individuals, groups, institutions and non-governmental organizations, within their areas of specialization, must treat human rights globally, in a fair and equal manner, on the same footing, and with the same emphasis.";

(xvii) Article 17: add the words ", or ignore the various historical, cultural and religious backgrounds of the societies and communities where they carry out their activities." at the end of the paragraph;

(xviii) New article 17 bis: add a new article, reading as follows: "Nothing in the present Declaration shall be interpreted as implying for any person, acting individually or in association with others, the right to take part in political activities that are reserved exclusively to the citizens of the State in which he or she is an alien."

30. At the 6th meeting, on 3 March 1998, following intensive multifaceted consultations conducted by a drafting group coordinated by the representatives of Egypt and the Netherlands, the Working Group was informed that an ad referendum agreement had been reached on the text for the draft declaration. The delegates of the Netherlands and Egypt explained that in the course of informal consultations they had put forward a non-paper addressing 17 outstanding issues, some with possible solutions or with suggestions for a

solution. It was stated that the atmosphere of mutual confidence made it possible to address the most difficult issues and achieve total agreement on the text presented to the plenary meeting of the Working Group. It was also indicated that this text was agreed to as a package with the understanding that it would be left to the Chairman-Rapporteur to insert in the appropriate place the article on financing as contained in CRP.3 and that the Chairman-Rapporteur would read out in plenary an authoritative interpretation of the words "attributable to" as contained in paragraph 2 of article 12 of the agreed text. This text, emanating from the informal consultations coordinated by the delegates of Egypt and the Netherlands, was circulated as CRP.5 (see also para. 31).

31. At the 7th meeting, on 4 March 1998, the Working Group had before it the revised text of the draft declaration submitted by the Chairman-Rapporteur (CRP.1/Rev.1), which consisted of the agreed text as contained in CRP.5 and included the text of the article on financing (CRP.3) as a new article 13. In introducing this document, the Chairman-Rapporteur also explained that the reason for moving former article 14 to new article 3 was to make it clear beyond any doubt that article 3 applied to all the rights referred to in the draft declaration. By so doing, it turned out to be possible to drop cross-references to domestic legislation in the respective articles. The only exception was article 13, where the reference to domestic legislation was a necessary element of the compromise text.

32. The Chairman-Rapporteur read out his interpretation of the words "attributable to" contained in the second part of article 12 (2) as follows:

> "The words 'activities and acts attributable to States' shall cover the acts of State organs as well as of agents of State, including the acts of agents of State trespassing their mandates."

33. At the same meeting, the Working Group adopted ad referendum the draft declaration (see annex).

D. Comments made following the adoption of the draft declaration

34. The representative of Argentina proposed that the draft declaration should be given special importance by the Commission on Human Rights and adopted as its first resolution during the fifty-fourth session. This proposal was supported by the representatives of Bangladesh, Canada, Chile, El Salvador, France, Germany, India, South Africa and Venezuela and the observer for Portugal.

35. The representative of Cuba, commenting on the previous statement, said that he considered it inappropriate for the Working Group to prejudge the way in which the Commission might wish to organize its work at its upcoming session, in particular to suggest that any draft resolution was more essential than any other, regardless of the importance it might have to some delegations. This would create a most undesirable precedent which would be unacceptable to his delegation. The representative, recalling that in

previous years the report of the Working Group was discussed by the Commission during the final week of the session, believed that it was necessary to allow the Secretariat more time to prepare an accurate report.

36. The observer for the Syrian Arab Republic stated that her delegation considered that some elements of the draft declaration should have been addressed differently, and underlined that they were matters of principle for the delegation. However, her delegation had accepted the text in a spirit of compromise.

37. The representative of Germany considered that the atmosphere of trust that had developed in the Working Group was the political basis of the compromise which was achieved. He stressed the importance of the adoption of the draft declaration even though Germany would have liked to see a stronger text. The way to success was also paved by the contribution of the Chairman-Rapporteur, his tenacity and involvement.

38. The representative of China considered it important that the Working Group in its drafting process was able to refrain from confrontation and lecturing, but rather engaged in patient dialogues to enhance understanding and bridge differences. Another factor that contributed to consensus was the observance of the principle of equality and mutual respect. Cooperation was always feasible if the principle of seeking common ground while reserving differences was observed. Although his delegation had some reservations on certain elements of the draft declaration, it had exercised flexibility and made some concessions in order to reach consensus. The representative of China also paid tribute to the former Chairman of the Working Group, Ambassador Ronald Walker of Australia, who had laid the foundation of the Group's success.

39. The representative of India also referred to the exemplary spirit of cooperation demonstrated by all delegations in the Working Group. He underlined the importance of the adoption of the draft declaration even though its text had not gone as far as his delegation would have liked. He felt that the adoption of the document was only the beginning of an interface between human rights defenders and the international community.

40. The International Service for Human Rights made a joint statement on behalf of the following non-governmental organizations: International Service for Human Rights, Amnesty International, International Commission of Jurists, Colombian Commission of Jurists, Baha'i International Community, Lawyers' Committee for Human Rights, The Carter Center, International Federation of Human Rights Leagues (FIDH), Organisation mondiale contre la torture (OMCT), Observatoire pour la protection des défenseurs des droits de l'homme, Lutheran World Federation, Afronet, Action des chrétien contre la torture (ACAT-Mexico) and Association for the Prevention of Torture (APT). It was stated that the draft declaration could prove to be useful for human rights defenders worldwide by enabling them to perform their courageous tasks in the promotion and protection of human rights and fundamental freedoms. However, any tampering with the present consensus text would threaten to undermine the credibility and usefulness of the declaration for those in the front line of human rights work. On that point, it was argued that the declaration, on its own, would not offer full protection for human rights defenders, many of whom

sat in the prisons of some of the States who were present in the Working Group. Yet, the declaration could mark a breakthrough in the approach of all States towards human rights and those individuals who promoted and protected those rights. NGOs had been very encouraged by the willingness of representatives of States to not merely reach a consensus on the draft, but also to be prepared to listen to, and in some cases to accept the concerns and positions of principle expressed by NGO representatives. If NGOs had written the draft text, it would have been rather different from the revised text of the Chairman-Rapporteur. NGOs' primary concern had always been, and would continue to be, that the declaration should be helpful for human rights defenders rather than hinder and repress them further. The resulting text was due to the extremely hard collective drafting exercise to which many NGO representatives had contributed and which had been so ably chaired for the last five years by Professor Helgesen. The Chairman had provided a very sound compromise document for discussion in CRP.1. Additionally, the success of the negotiations should also be attributed to the efforts of the representatives of Egypt and the Netherlands.

41. The representative of Malaysia felt that the adoption of the declaration would not by itself solve all the problems which human rights defenders faced in their work. The declaration as adopted was not a perfect document, and no delegation was perfectly happy with the outcome of the negotiations. Besides, the declaration did not break much new ground. On the other hand, the adoption was an expression of the collective will of the international community and the recognition of the role which human rights defenders played in the field of human rights. It was also a move forward, insofar as it had set a new standard by which behaviour was to be judged. By laying down certain loose guidelines on the responsibilities of human rights defenders, their credibility as a whole would hopefully be further enhanced. This in turn might have the practical effect of facilitating their work. It would depend on the implementation of the document.

42. The observer for Egypt said that the positive result of the negotiations was due to mutual respect between different parties and different views. The success of the Working Group in this difficult subject should be considered as an example to be followed in the future. The text of the declaration should be understood in the spirit of partnership and common responsibility of all parties towards the promotion of human rights, bearing in mind that the primary responsibilities in that respect lay with the State. He stressed that the compromises needed to reach consensus on the text were not made on the substance and did respect both national and international law.

43. He also stressed that the role of NGOs was very important and positive and should be continued in the same spirit. In that respect, the declaration should be seen as a common ground for action aimed at achieving a shared goal, which was better protection for human rights and for human rights defenders. His delegation had co-sponsored CRP.4 in that spirit and hoped to see the same spirit of understanding, equality and partnership continued in the future.

44. The observer for Ethiopia said that his delegation was delighted that the draft declaration had been adopted after 13 years of extensive discussions. He congratulated the Chairman-Rapporteur for the work he had accomplished and the transparency he had demonstrated in holding consultations

before he finalized his consolidated text, which enabled the Working Group to reach the final positive result. He also expressed appreciation for the work done in the informal consultations by the delegations of Egypt, the Netherlands and Norway.

45. The representative of France expressed the view that the draft declaration was not a perfect document and, consequently, it was not fully satisfactory to everyone. The delegation of France would also have liked to see a more ambitious text. However, the adoption of this document was a highly positive development.

46. The representative of Mexico considered it to be of particular importance that there was the political will to achieve agreement within the framework of multilateral negotiations. He felt that the adopted text, even if not perfect, was a historic document, since it gave international recognition to the work of non-governmental organizations and individual human rights defenders. The delegation paid tribute to the representatives of NGOs in the Working Group for their contribution to the successful completion of the work.

47. The representative of Bangladesh congratulated the Chairman for his indefatigable efforts in steering the deliberations from wide divergences to a finally agreed text. He stressed, in that regard, the importance of the generally prevailing political will for adopting the declaration during this year commemorating the fiftieth anniversary of the Universal Declaration of Human Rights. He wished to see the spirit of the final phase of deliberations as the beginning of a season of convergence - a spirit that he hoped would define the fiftieth anniversary commemoration of the Universal Declaration of Human Rights.

48. The observer for the Netherlands stated that the acceptance of the text was a milestone. Although it had not met earlier expectations on all points, it was certainly a step forward. He expressed his gratitude to the Chairman-Rapporteur and to his Egyptian colleagues with whom he had conducted the work of the informal drafting group.

49. The observer for the Carter Center stated that the draft declaration did not necessarily represent her delegation's most preferred text. She expressed the hope that the best aspects of the declaration would guide its implementation at the national and international levels.

50. The observer for the Colombian Commission of Jurists stated that he represented hundreds of persecuted human rights defenders in Colombia. He expressed the hope that once the declaration had been adopted, it would contribute to improving the protection of human rights defenders in his country.

51. The representative of El Salvador congratulated and expressed his gratitude to all the delegations that had participated, in a constructive manner and in a spirit of compromise, in the elaboration of the document that had been adopted ad referendum, in particular the delegations of the Netherlands and Egypt. He considered that the text was balanced and fair, even though it did not fully satisfy everyone. The arduous, 13-year task had

not been in vain: a consensus text had been achieved which allowed the Working Group to conclude its work successfully. He joined with those delegations that had expressed the view that the draft declaration was, if not the most significant contribution of the Commission, at least an appropriate commemoration of the fiftieth anniversary of the Universal Declaration of Human Rights. It should therefore be adopted, as the representative of Argentina had suggested, as the first resolution of the fifty-fourth session of the Commission.

52. The representative of Canada felt that the text of the draft declaration, while imperfect, was a very delicate balance which had permitted a consensus.

53. The observer for Australia agreed that, while the text was not perfect, it was acceptable to his delegation as a consensus text.

54. The representative of the United States of America stated that his delegation would have preferred to have made changes to the text in order to make it stronger and more accurate and precise from a drafting and a legal standpoint. However, his delegation had joined many delegations in refraining from proposing changes to the Chairman's compromise text, despite some difficulties, in order to achieve a consensus text. His delegation was pleased that a positive consensus text had emerged. He also noted that States, NGOs and the Secretariat had worked together closely and constructively during the final session and that this had been instrumental in achieving agreement after more than 13 years of negotiations.

55. The observer for Finland indicated that the adoption ad referendum of the draft declaration was a valuable demonstration of cooperation. The compromise text, although not a perfect document, was acceptable to his Government.

56. The representative of South Africa expressed the view that the text of the draft declaration was balanced, fair and equitable.

57. The representative of the Sudan congratulated the Chairman-Rapporteur for the wise way in which he had conducted the affairs of the Working Group and commended the spirit that had surrounded the discussions and the excellent role played by the representatives of the Netherlands and Egypt. His delegation believed that the positive outcome would not have been achieved without the spirit of cooperation and dialogue that had prevailed during the informal consultations. The experience had taught that human rights issues should be addressed in a universal, non-selective and impartial way, without politicization, anchoring of positions or confrontations. In that regard, he associated himself with the sentiments expressed by the representative of China. He reiterated the need to be supportive and to encourage the promotion of a vigorous civil society committed to the enhancement of human rights.

58. The observer for the International Commission of Jurists recalled that, throughout the negotiations, States had affirmed that their proposals were designed to reinforce the rights and protections of human rights defenders. By adopting the declaration, States had confirmed that intention. They must now ensure that the rights contained in the declaration were put into practice

everywhere. NGOs would be vigilant in assessing whether the declaration was applied positively in spirit, law and practice and only in ways that made it easier for human rights defenders to operate.

59. The draft declaration confirmed, clarified and reinforced existing human rights. States had a duty not to derogate from their international human rights obligations and commitments, including those referred to in the declaration. In order to comply with the declaration, national laws and practices would have to be brought into conformity with it.

60. Despite the absence of an explicit prescription, the declaration as a whole and international norms required that States not act arbitrarily toward nor discriminate against or between human rights defenders. Any legal regime affecting defenders must facilitate their work, not hinder it.

61. While the international community was obliged to promote all human rights, human rights defenders, acting individually and in association with others, had the right to decide what particular facet of human rights would be the focus of their attention and what peaceful methods they would employ in the pursuit of their goals, subject only to reasonable limitations in accordance with the law. Neither the families and friends of victims, nor the organizations assisting them, had a duty to be fully impartial or objective in their promotion or pursuit of human rights. The declaration reaffirmed that persons voluntarily contributing to the promotion, protection or defence of human rights deserved encouragement from the international community.

62. The Lawyers' Committee for Human Rights submitted comments stating that it welcomed the adoption ad referendum of the draft declaration on human rights defenders as an important step towards greater recognition and protection of the work of human rights defenders around the world. The Lawyers' Committee made the following interpretive statement regarding the text of the draft declaration:

(a) The promotion and protection of human rights and fundamental freedoms were legitimate concerns of the international community and could therefore no longer be considered to be "matters falling essentially within the jurisdiction of the State", as referred to in Article 2.7 of the Charter of the United Nations;

(b) Recognizing that human rights were universal, indivisible, interdependent and interrelated, the international community as a whole should strive towards a fair and equitable promotion and implementation of human rights and fundamental freedoms. Human rights defenders should be free to determine the focus and scope of any human rights activity, and be subject only to the limitations referred to in article 17 of the declaration;

(c) Domestic law could provide a juridical framework for the activities in the declaration only if the law was in full compliance with the international obligations of the State in the field of human rights. International human rights obligations were to be interpreted as comprising all treaty-based and customary law obligations of the State, as well as human rights standards adopted within the United Nations system and by regional human rights bodies;

(d) The notion of responsibilities of human rights defenders should be interpreted in the context of the important role of human rights defenders in promoting and protecting human rights and fundamental freedoms at the national and international levels. By carrying out the activities referred to in the declaration, human rights defenders would make important contributions to safeguarding democracy and the advancement of democratic institutions and processes.

63. The delegation of Japan welcomed the adoption of the draft declaration. While the document was not perfect, it was very important to show the political will to adopt this important declaration by consensus on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights. The document was fully acceptable to the Government of Japan. The delegation expressed its gratitude to the Chairman-Rapporteur for his hard work towards the successful conclusion.

64. Several other delegations, including those of Brazil, Denmark and the United Kingdom of Great Britain and Northern Ireland, also expressed their intention to take the floor to make comments but were unable to do so because of lack of time.

Annex

Draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms

PREAMBLE

The General Assembly,

Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,

Reaffirming the importance of the Universal Declaration of Human Rights and the International Covenants on Human Rights as basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the United Nations system, as well as those at the regional level,

Stressing that all members of the international community shall fulfil, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind, including distinctions based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and reaffirming the particular importance of achieving international cooperation to fulfil this obligation according to the Charter of the United Nations,

Acknowledging the important role of international cooperation for and the valuable work of individuals, groups and associations in contributing to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity, and from refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources,

Recognizing the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, and mindful that the absence of international peace and security does not excuse non-compliance,

Reiterating that all human rights and fundamental freedoms are universal, indivisible and interdependent and interrelated, and should be promoted and implemented in a fair and equitable manner, without prejudice to the implementation of each of these rights and freedoms,

Stressing that the primary responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State,

Recognizing the right and the responsibility of individuals, groups and associations to promote respect for, and foster knowledge of, human rights and fundamental freedoms at the national and international levels,

Declares:

Article 1

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

Article 2

1. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political as well as other fields and the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all these rights and freedoms in practice.

2. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in this Declaration are effectively guaranteed.

Article 3

Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed, and within which all activities referred to in this Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

Article 4

Nothing in the present Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations nor as restricting or derogating from the provisions of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments and commitments applicable in this field.

Article 5

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

(a) To meet or assemble peacefully;

(b) To form, join and participate in non-governmental organizations, associations or groups;

(c) To communicate with non-governmental or intergovernmental organizations.

Article 6

Everyone has the right, individually and in association with others:

(a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how these rights and freedoms are given effect in domestic legislative, judicial or administrative systems;

(b) As provided in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge of all human rights and fundamental freedoms;

(c) To study, discuss, form and hold opinions on the observance, both in law and practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to these matters.

Article 7

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles, and to advocate their acceptance.

Article 8

1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of one's country and in the conduct of public affairs.

2. This includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs, criticism and proposals for improving their functioning and to draw attention to any aspect of their work which may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

Article 9

1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in this Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of violation of these rights.

2. To this end, everyone whose rights or freedoms are allegedly violated, has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law, and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms; as well as enforcement of the eventual decision and award; all without undue delay.

3. To the same end, everyone has the right, individually and in association with others, inter alia:

(a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms by petitions or other appropriate means to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;

(b) To attend public hearings, proceedings and trials, to form an opinion on their compliance with national law and applicable international obligations and commitments;

(c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

4. To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.

5. The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

Article 10

No one shall participate, by act or failure to act where required, in violating human rights and fundamental freedoms, and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

Article 11

Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.

Article 12

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in this Declaration.

In this connection, everyone is entitled, individually and in association with others, to be effectively protected under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States which result in violations of human rights and fundamental freedoms as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Article 13

Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms, through peaceful means, in accordance with article 3 of this Declaration.

Article 14

1. The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.

2. Such measures shall include, inter alia:

(a) The publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments;

(b) Full and equal access to international documents in the field of human rights, including the State's periodic reports to the bodies established by the international human rights treaties to which it is a party, as well as the summary records of discussions and the official reports of these bodies.

3. The State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institutions.

Article 15

The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education, and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme.

Article 16

Individuals, non-governmental organizations and relevant institutions have an important role in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to further strengthen, inter alia, understanding, tolerance, peace and friendly relations among nations and amongst all racial and religious groups, bearing in mind the various backgrounds of societies and communities, in which they carry out their activities.

Article 17

In the exercise of the rights and freedoms referred to in this Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Article 18

1. Everyone has duties towards and within the community in which alone the free and full development of his or her personality is possible.

2. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.

3. Likewise, they have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.

Article 19

Nothing in the present Declaration shall be interpreted as implying for any individual, group or organ of society or any State the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in this Declaration.

Article 20

Nor shall anything in the present Declaration be interpreted as permitting States to support and promote activities of individuals, groups of individuals, institutions or non-governmental organizations contrary to the provisions of the Charter of the United Nations.